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Via e-mail: dv_context@calwater.ca.gov

Delta Vision Blue Ribbon Task Force
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

Re: SDWA Further Comments to the Delta Vision Strategic Plan, Fifth Draft

Gentlemen/Ladies:

The South Delta Water agency submits the following additional comments to the Fifth Draft of the Delta Vision's Strategic Plan. This letter follows SDWA's previous comments submitted on October 15, 2008.

1. SDWA does not at this time take any position of the Delta being made a National Heritage Area, or State Recreational Area, or being part of a Conservancy. We caution however, that most if not all of such possibilities create regulatory oversight on in-Delta parties. These oversights and the rules and regulations resulting therefrom will mainly be used to mitigate past impacts to Delta habitat and species. Until there is an open, public process which determines what parties caused what harm to the Delta, in-Delta interests should not be burdened by mitigation for which others are responsible.

2. Strategy 2.2 discusses the creation of "market incentives" to enhance Delta agriculture. Such suggestions should be extremely limited in light of similar past efforts in other areas. It is incorrect to assume that any elected or appointed officials can determine what should be encouraged or what is or can be made economically beneficial. Typically, government comes up with "good ideas" which end of causing unforeseen impacts to the detriment of many interests. We cite to the "corn for ethanol" fiasco. It is difficult to image any body other than farmers developing "sustainable agriculture" for an area. The notion that farmers might turn to growing tules for carbon sequestration or to prevent subsidence is highly suspect.

3. Strategy 2.4 discusses developing a fund for local economic development. Since the Vision seeks to remove 100,000 acres of land from profitable agricultural use, and a further unknown amount of acreage lost to an isolated facility and its necessary mitigation, it is hard to grasp the concept of "helping" the area's economic development. Removing hundreds of thousands of acreage from agriculture places such stresses on the supporting industries and businesses that the infrastructure of the entire agricultural community will likely collapse. No "fund" can stop that process. A better approach would be to ensure that export are not done in a manner which interferes with local agriculture, does not adversely impact endangered species, and then let local agriculture proceed as do all business/industries. To highlight this, it should be noted that the demise of numerous fish species has resulted in most of the Delta being designated critical habitat for those species. The consequence of this is that the requirements for dredging have made such activities extremely difficult and rare, with the loss of dredging companies and equipment.

4. Strategy 3 seeks to restore "intertidal marshes" and "seasonal flood plains" in the Delta. This evidences some of the fundamental mistakes adopted by the Vision. The drafters and the Task Force have confused "tidal lands" with "swamp and overflowed lands." Tidal lands are those subject to regular inundation, and which were not transferred from State ownership. Swamp and overflowed lands (which includes most of the Delta) were subject to periodic overflow due to yearly/seasonal high inflows and were transferred to private ownership. This means that virtually all of the Delta islands were NOT tidal habitat and thus not part of the tidal environment used/needed by certain species.

The Plan talks about "restoring intertidal marshes" on Delta islands which never existed. Of course, it is certainly possible that interests like the Task Force may decide they want to create new tidal areas in order to create a new habitat to replace or augment other habitat. However, the decision should not be based on the false notion that such efforts are "restoring" such habitat that used to be in the Delta; it was not. The analysis leading up to any decision should be based on facts, not someone's incorrect understanding of Delta history. The lands now known as the Delta islands were periodically covered with fresh water overflows, not with salty tidal overflows. There are no records to supposed the idea that there were significant acres in the Delta subject to tidal excursion (excepting the original channels). In dry times, although salty tidal waters would rarely move far "upstream," that salty habitat was confined to the channels, and did not include the islands. That habitat has not been lost

It should also be questioned how numbers like "100,000" acres are developed. Are there any calculations which conclude that "X amount of new tidal(of what salinity?) habitat will result in Y amount of increased fish numbers? No such analysis has been shown suggesting that such numbers are unsupportable except through someone's "feel."

5. Strategy 3.1.1 also suggests the creation of flood plain and flood bypass in the southern Delta. First, the southern Delta already has a flood bypass; Paradise Cut. It was designed to carry a certain amount of flow at times when flood flows on the San Joaquin were at or above a certain level. Suggesting a new bypass instead of restoring the existing one seems a waste of resources and efforts. Second, the flows on the San Joaquin are not normally high enough to create any new flood plain environment. In most years, the flow is at or below 2000 cfs. Third, the areas suggested for the flood plain in the southern Delta area anywhere from 5 to 15 feet above sea level, meaning that one would have to lower the land by many feet to get any flooding in most years.

For many years the efforts of State, Federal and local officials have been to protect the reclaimed Delta lands from periodic inundation. Numerous public and private assets as well as human life are dependant on such protection. Altering levees to create new flood plains would seem to be the wrong approach. If additional flows are ever ordered on the San Joaquin and its tributaries, it would seem more beneficial to re-establish the natural flood plains upstream (where the numerous wildlife refuges are) in order to provide fish protection areas. The southern Delta cannot be considered a "Yolo Bypass-to-be" because of geography and water supply. It appears that the confusion of lumping tidal lands with swamp and overflowed lands together has caused another mistake.

6. Strategy 3.2 again suggests that the existing channels and lands in the southern Delta can be reconfigured to become something like a Yolo Bypass. It does not appear that the decline in San Joaquin system fisheries is due to any loss of habitat from Vernalis to the confluence. To the contrary, the declines seem to be due to decreased flows and variability of flows, and more importantly, the "disconnection" of the River from the Bay. At most times in most years, none of the San Joaquin flow reaches the Bay because it is all redirected to the export pumps. Now, due to decreases in upstream flows, even with the exports shut off, there is still insufficient flow to reach the Bay. Hence the "cure" is to reconnect the River to the Bay. This is not accomplished by reconfiguring the channels, creating flood plains or taking land out of agriculture.

7. Strategy 3.3 discusses possible changes to in-Delta diversions as a method of reducing adverse impacts on fisheries. To date, there is no indication that in-Delta agricultural diversions have any significant effect on any fish species, though there are plenty of unsupported statements. We previously provided you with references to four DWR/DFG studies which indicate such lack of impacts. Suggestions to consolidate intakes are ill-conceived as they ignore the impacts of having larger intakes which increase the effects on fish, channels flows and quality.

8. Strategy 3.4 correctly identifies the need to increase in-stream flows and Delta outflow to restore and protect Delta fisheries. As previously stated to the Task Force, the SWP is currently 5 million acre feet short of (average annual) supply based on initial system-wide needs and runoff. When the projects export 8 million acre feet, but failed to add 5 million acre feet of supply, it is clear that they have significantly interfered with the flows necessary to protect most any fish population. The section also talks about reducing diversions from the ecosystem. The law requires all parties to do two things: mitigate adverse impacts to other users, and divert water in accordance with water right priorities. Any party with rights superior to the exports should not be forced to divert less until the projects mitigate their impacts and are first shut down.

9. We agree that once the projects have mitigated their impacts to fisheries and the environment, and once there is the resulting improvement/protection of endangered species, the export system should be operated to take advantage of high flow times as part of a comprehensive program to increase the water supply.

10. We are not sure the Plan should include instructions and deadlines for SWRCB actions, other than to say that Board should abide by its statutory obligations. The SWRCB is currently undertaking its legally required review of the Bay-Delta Water Quality Control Plan, which should result in determinations of what flows are necessary to protect fish and mitigate for project impacts. However, the SWRCB is currently not enforcing project permit terms and conditions and is not enforcing water quality objectives/standards. Such inexcusable behavior should be highlighted and criticized.

11. Strategy 3.4.7 incorrectly identifies changes in Delta geometry as a cause of estuarine circulation problems and therefore fishery health. The need to re-establish a San Joaquin River's connection to the Bay is what is necessary, not different channel configurations, excepting to the degree that blocking some channels may help create net flows, maintain water quality and prevent fish from approaching areas of export influence.

12. Strategy 3.5 fails to mention the ongoing water quality violations in the southern Delta, does not note the SWRCB's failure to enforce the relevant permit terms and conditions and does not suggest southern Delta water quality should be improved or protected. Need we repeated this more loudly? One might get the impression the Task Force has decided southern Delta agriculture should not be protected.

13. Goal 4 talks about reducing demand, including agricultural demand. General rules have some importance, but normally obscure too many specifics. All water diverted in the Delta (for in-Delta use) is either consumed or returned to the Delta. Hence, conservation, re-use

and other such suggestions have no effect on the water supply or the amount of water in Delta channels. In fact, upstream conservation results in decreased Delta inflow, or a transfer of a shortage from one user to another. Further, in-Delta diversions are needed to flush out the salts (added by the CVP in upstream areas). Decreasing the amount of diversion would therefore cause a salt build-up in the soil profiles and harm agriculture.

It should be noted that the Plan's suggestion to create more tidal lands and more flood plains will result in an increased consumption of water and therefore a decreased supply for all purposes. Habitat lands typically consume significantly more water per acre than do local crops.

14. Strategy 4.1 et. seq. continues the Task Force's ideas on the use of "reasonable use" to rewrite California law. The principle is not a method of deciding to disallow someone's use of water. Previous comments by other parties have highlighted the Task Force's misunderstanding in this area.

15. Strategy 5 has been altered from previous drafts to the point where it now reveals its underlying fallacy. There can be no "preliminary" choice of an isolated or dual facility *until* all the analyses are done. These include legal, physical, biological and economic investigations, none of which have been done. Perhaps the PC costs \$25 billion and creates warm stagnant zones on the Sacramento system which adversely affect the fisheries while creating no new water supply? Clearly it is premature to make any comments on what is best for fisheries or the State. The Plan suggests DWR and other investigate a dual facility. The BDCP is proceeding full bore to get permits for an isolated facility. SWP contractors and DWR have already decided they will build the PC and have discarded any notion of a dual facility. The Plan should recognize this reality and not assume that DWR is capable of some sort of fair analysis of the issues.

16. We support the idea of coordinating dam/reservoir operations with downstream flood control operations and water supply opportunities. As stated before, one must start at the top of the system. Decisions on how much water might enter reservoirs determine how much channel capacity is needed and how much water is available to be bled off the system for other use or storage for future use. This coordinated approach is the most rational and likely way to address the state's overall water supply needs and groundwater depletions.

17. Strategy 6.2.1 is unclear. It appears to endorse increased land use oversight, but apparently not for the purpose of protecting the land, but for the purpose of changing the use of the land into flood overflow and other uses. This change of land use was covered above. It does not appear that current land use restrictions in the referenced areas are in anyway lacking. The Plan should certainly not suggest the levees protecting the referenced areas should be altered or removed.

18. Strategy 6 should be brought into agreement with previous submissions by the CDWA, SDWA and Tom Zuckerman. Although the allocation of funding necessarily means that some levee/flood protection work is to be done before others, the principle should always be that we intend to protect all of the islands and the lands protected by levees.

19. SDWA strongly opposes the creation of a new super Delta agency or governing board. It is not possible to do away with the various federal and state regulatory authorities or to combine them with interests that have goals contrary to their duties. The Plan derides and overemphasizes the numerous governmental agencies with some oversight in the Delta without any comparison to the numerous such oversights in all other areas. If we learned anything from the CalFed debacle, it should be that putting the regulators in with the regulated, and encouraging them to reach consensus is the worst possible approach. Anyone who is not familiar with how CalFed destroyed the fishery agencies incentive to act independently and responsibilities should spend the time to find out. We all may want to streamline decision making and impose our thoughts and ideas on others, but institutionalizing that creates disaster. As discussed in our October 15, 2008 letter, the problems of the Delta were that the fishery agencies and other regulators failed to force the projects to obey the law. Creating a new political entity subject to the exporters influence will only make the fishery agencies defeat complete.

20. Strategy 7.1.5 continues the unsupported notion that somehow in-Delta diversions, which have remained constant or declined for 100 years, are somehow a cause of the problem. The notion is not worthy of inclusion in the Plan. This section also talks about how in-Delta reporting should be required so that someone can keep tabs on in-Delta use. The proposal ignores both history and the realities of the Delta and the governing law. First, as stated above, Delta diversion rates and amounts have no effect on in-Delta supplies as all of the water not used is returned to the Delta.

Second, Delta use, including diversions and discharges are affected by the interconnection between the channels and the land. Knowing how much is being diverted at any one time does not reveal how much is being used or consumed. This is why the current requirements are to estimate usage through crop consumptive use calculations; they are more accurate than measurements of diversions or discharges. Third, in-Delta use is already protected with statutory preferences. If someone does find an "illegal" diverter, that user is entitled by law to get a supply contract from the projects with priority over exports. Instead of recognizing these facts, the Plan moves off into the realm of bias by suggesting that we need not protect and can get rid of those pesky Delta diverters. The reasoning behind this is that the isolated facility will

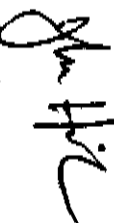
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destroy the southern Delta and so we must justify that death. This is why the Plan makes no reference to protecting southern Delta agriculture; it seeks to remove southern Delta agriculture.

Very truly yours,

A handwritten signature in black ink, appearing to read "John H. Herrick". The signature is stylized with a large, flowing "H" and a cursive "Herrick".

JOHN HERRICK